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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In The Matter of	)	
1998 Biennial Regulatory Review – Part 61 of the Commission's Rules and Related Tariffing Requirements	)	**CC Docket No. 98-131**

REPLY COMMENTS OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

The Telecommunications Resellers Association ("TRA"), through undersigned counsel and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, hereby responds to selected comments of other parties addressing the proposed modifications to Part 61 of the Commission's Rules, 47 C.F.R. § 61.1, *et. seq.*, and related Part 63 and 69 tariffing requirements, 47 C.F.R. §§ 63.10 & 69.3, detailed in the *Notice of Proposed Rulemaking*, FCC 98-164, released in the captioned proceeding on July 24, 1998 ("*NPRM*"). Specifically, TRA supports two recommendations offered by AT&T Corp. ("AT&T") and opposes the efforts of a number of Bell Operating Companies ("BOCs") and their representative[1] to expand the scope of the proceeding in a procedurally impermissible manner.

Initially, TRA endorses AT&T's proposals that the Commission expand to 90 days the period of time in which a non-dominant interexchange carrier in a mandatory detariffing

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[1] Comments of Ameritech, BellSouth Corporation ("BellSouth"), the Bell Atlantic Telephone Companies ("Bell Atlantic"), SBC Communications Inc. ("SBC"), U S WEST Communications, Inc. ("US WEST"), and the United States Telephone Association ("USTA") (collectively, the "BOC Commenters").

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environment may provide service pursuant to tariff following a customer preferred interexchange carrier ("PIC") selection or change. Like AT&T, TRA has argued that the Commission lacks the authority to preclude carriers from filing tariffs and has challenged mandatory detariffing as a legal and policy matter both before the Commission and the U.S. Court of Appeals for the District of Columbia Circuit. While continuing to oppose the Commission's mandatory detariffing policy, TRA agrees with AT&T that in the event that this policy is retained by the Commission and upheld on appeal, the period of time in which a non-dominant interexchange carrier may provide service pursuant to tariff following a customer PIC selection or change should be expanded from 45 to 90 days. As AT&T points out, the subject-to-tariff period should be expanded to provide sufficient time for carriers and customers to memorialize their contractual relationship in a written agreement. In the absence of adequate time for customers to review, execute and return service contracts, carriers will be compelled to discontinue service to customers who desire to utilize their services, but who have not promptly entered into a written service agreement, serving neither the customer's nor the carrier's interests. TRA further agrees with AT&T that the 90-day period should be measured from the date the pertinent local exchange carrier ("LEC") notifies the selected IXC of a PIC selection or change in order to compensate for LEC delays in providing such notice. This latter modification ensures that carrier and customer alike are provided with sufficient time to implement the customer's choice of carrier.

TRA also endorses AT&T's recommendation that non-dominant carrier tariff cross-reference rights be no less extensive than those of dominant carriers. Accordingly, TRA agrees with AT&T that non-dominant carriers should be afforded the same, if not greater, tariff cross-reference rights than those to which dominant carriers are entitled under Section 61.74, 47 C.F.R. § 61.47.

The ability to cross-reference tariffs and other publicly available documents greatly reduces cost and administrative burdens on smaller providers, allowing them to simplify and limit the size of the tariffs they maintain on file with the Commission. Such ability can also reduce the quantity of tariff modifications smaller carriers must make.

In *contrast*, TRA strongly opposes efforts by the BOC Commenters to dramatically expand the scope of this proceeding to include consideration of various proposals presented by USTA in a petition for rulemaking filed with the Commission on September 30, 1998, as well as proposals for enhanced incumbent LEC pricing flexibility advanced by Ameritech and Bell Atlantic in the Commission's access charge reform rulemaking proceeding. Repeatedly referencing the USTA petition, the BOC Commenters urge the Commission, among other things, to substantially modify the LEC price cap regime and to authorize the use of contract tariffs by monopoly incumbent LECs. For its part, Bell Atlantic urges the Commission to provide incumbent LECs with increased pricing flexibility, ultimately removing interstate access services from price caps as part of that process.

TRA certainly does not question USTA's right to petition the Commission to undertake further deregulatory initiatives. Nor does TRA suggest that Bell Atlantic should not seek enhanced pricing flexibility. The instant proceeding, however, is not an appropriate forum in which to pursue these matters. This proceeding was commenced more than two months before USTA filed its rulemaking petition. By filing its petition after the *NPRM* was released, USTA tacitly admitted that the matters it was raising in its petition were not live issues in this proceeding. As described by USTA, in the *NPRM*, the Commission "proposes minor modifications to the current Part 61

rules."[2] To compensate for the Commission's purported failure to "meet . . . [its] obligation under Section 11 of the Telecommunications Act of 1996 to review all of its regulations every two years to determine whether any such regulation is no longer necessary in the public interest as a result of meaningful economic competition between providers of such service and to repeal or modify any regulation it determines to be no longer necessary in the public interest," USTA filed a rulemaking petition which sought a "comprehensive review of Part 47 of the Code of Federal Regulations."[3] As couched by US WEST, USTA has recommended a "comprehensive rewrite" of "the Commission's existing Part 61, Part 69 and price cap rules."[4] Ameritech refers to the USTA proposals as "a comprehensive restructure of Part 61 and related portions of the Commission's rules."[5]

Certainly, the Commission should consider the USTA petition, although TRA submits that such review will reveal that it is predicated on a series of false assumptions regarding the state of local competition which render it baseless in a number of critical aspects. The Commission has already called for and received public comment on the Bell Atlantic and Ameritech proposals for increased incumbent LEC pricing flexibility and other proposed modifications to the existent LEC price cap regime.[6] The Commission, accordingly, need not dramatically expand the scope of this proceeding to encompass these matters at this late date. Moreover, it should not and

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[2] USTA Comments at 1.

[3] Id. at 1 - 2.

[4] US WEST Comments at 1 - 2.

[5] Ameritech Comments at 2.

[6] Public Notice, FCC 98-256 (released Oct. 5, 1998).

cannot do so. As a practical matter, the USTA proposals are so broad and so flawed that they demand full industry and public participation to facilitate the development of a comprehensive record upon which they can be fully evaluated. As a legal matter, such a substantial expansion of the scope of this proceeding would violate the Commission's basic notice obligations. It is hardly enough to provide notice of what Ameritech refers to as "clerical" changes[7] and then engage in a "comprehensive rewrite"of "the Commission's existing Part 61, Part 69 and price cap rules."[8] While Ameritech, apparently recognizing as much, attempts to justify consideration of the USTA proposals here as logical outgrowths of the *NPRM* proposals,[9] such an approach would essentially eviscerate the notice and comment element of the rulemaking process, allowing administrative agencies to hint obliquely at what they might do, rather than providing any meaningful indication of likely or potential actions.

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7 Ameritech Comments at 11.

8 US WEST Comments at 1 - 2.

9 Ameritech Comments at 8.

By reason of the foregoing, the Telecommunications Resellers Association again urges the Commission to modify, consistent with the above and its earlier-filed comment, the revisions to Part 61 of its Rules and related Part 63 and Part 69 tariffing requirements set forth in the *Notice of Proposed Rulemaking*.

Respectfully submitted,

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